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U.S.

Proud Boys Attorney Finds 'Hidden' FBI Messages During Jan. 6 Trial

BY **MATTHEW IMPELLI** ON 3/9/23 AT 1:16 PM EST



An attorney for [Proud Boys](#) member Ethan Nordean recently filed a motion alleging that he found "hidden" messages exchanged between two [FBI](#) agents, in the ongoing sediton trial stemming from the January 6, 2021, riot at the U.S. Capitol.

In a court document filed Wednesday night, Nordean's attorney, Nicholas Smith, said that following a cross examination of government witness Special Agent Nicole Miller, she was required to turn over any written statements related to her testimony under the Jencks Act. Miller produced her digital messages she had in an Excel worksheet, but "a close examination of the agent's sheet revealed over one thousand hidden Excel rows of messages," the court document said.

The document filing comes amid the ongoing sediton trial involving Nordean, as well as other [Proud Boys](#) members such as (former Proud Boys chairman) Enrique Tarrio, Joseph Biggs, Dominic Pezzol and Zachary Rehl. They have been accused of seditious conspiracy (among other charges) in an effort to overturn the results of the 2020 presidential election.

"From the hidden rows in Miller's Lync spreadsheet it is apparent that the defense has not received all of her Jencks statements in these relevant communications," the document

responding to the agent—but her own statements are missing.

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Pro-Trump supporters storm the U.S. Capitol following a rally with President Donald Trump on January 6, 2021, in Washington, D.C. The rooster symbol of the Proud Boys is seen on the jacket of Proud Boys Member "Flip Todd" as he gives a speech during a far-right rally outside the Oregon State Capitol on January 8, 2022, in Salem. On March 8, 2023, an attorney for a member of the Proud Boys said that there were "hidden" messages between two FBI agents involved in the case.

SAMUEL CORUM/MATHIEU LEWIS-ROLLAND/AFP/GETTY IMAGES

Over the past several months, [Republicans](#) have continued to take aim at the FBI and [Department of Justice](#), saying that the federal [agencies](#) have been weaponized politically.

After taking control of the House in January, Republicans created a new subcommittee, the Select Subcommittee on the [Weaponization](#) of the Federal Government, to investigate federal agencies such as the FBI and Justice Department.

In one portion of the court documents filed on Wednesday, Nordean's attorney includes communications between Miller and another FBI agent. However, the document states that "the Miller message to which the agent was replying is missing from the Jencks production."

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"From the hidden rows in Miller's Lync spreadsheet it is apparent that the defense has not received all of her Jencks statements in these relevant communications. That is because the individuals with whom Miller exchanges messages can be seen responding to the agent—but her own statements are missing," the court document said.

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defense spoke about the motion. When asked about removing messages from the spreadsheet, Miller said she provided anything related to the investigation but filtered the messages she sent.

Additionally, according to Parloff, one defense attorney asked if the government can produce a full log of what messages were deleted, Assistant U.S. Attorney Jocelyn Ballantine said, "we can provide log of what we delete from the production and provide that to court with explanation why."



"The government's Jencks obligation is always a ripe area of inquiry for defense attorneys," Michael McAuliffe, a former federal prosecutor and elected state attorney, told *Newsweek* on Thursday. "That is especially true in long-term, complicated cases involving many federal agents and investigators. Agents have specific protocols they need to follow, but they make mistakes and/or leave out materials otherwise falling under the disclosure obligations."

"Certainly, the prosecutors will need to check the agent's prior statements and turn over any additional exchanges. It is an all too frequent nightmare for prosecutors. The prosecutors likely didn't get the chance to make the judgment about what to turn over as they might not have known there were more potentially relevant agent messages."

Newsweek reached out to Nordean's attorney, the U.S. Attorney's Office in Washington, D.C., and the Department of Justice via email for comment.

Correction 3/9/23, 2:25 p.m. ET: This story was updated to correct the first name of Ethan Nordean's attorney, Nicholas Smith.

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